



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



Munce's Superior, Inc
620 Main Street
Gorham, NH 03581

Re Wildcat Mountain Maintenance Garage
Pinkham's Grant Route 16
Pinkham's Notch Road
Jackson, New Hampshire

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
No. AF 02-031**

September 27, 2002

I. INTRODUCTION

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Waste Management Division ("the Division") to Munce's Superior, Inc., pursuant to RSA 146-A:11-c and Env-C 615.04(n). The Division is proposing that fines totaling \$2,500 be imposed against Munce's Superior, Inc. for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Waste Management Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Munce's Superior, Inc. ("Munce") is a New Hampshire corporation having a mailing address of 620 Main Street, Gorham, NH 03581.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. RSA 146-A authorizes the Department of Environmental Services ("DES") to regulate aboveground storage tank ("AST") facilities. Pursuant to RSA 146-A:11-c, the Commissioner of DES has adopted rules to implement this regulatory program (Env-Wm 1402, effective April 25, 1997).
2. RSA 146-A:15 authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-A, including any rule adopted pursuant thereto. Pursuant to RSA 146-C:15, the Commissioner has adopted Env-C 615 to establish the schedule of fines for such violations.
3. Munce is the owner of two 10,000-gallon diesel and one 550-gallon gasoline aboveground storage tank systems ("AST Systems") identified by the DES site number 198905027 and AST identification number 0000074 ("the Facility") located at Wildcat Mountain Maintenance Garage in Jackson, New Hampshire. The AST Systems at the Facility are subject to the requirements of RSA 146-A and the

rules adopted pursuant to that chapter, NH Admin. Rules Env-Wm 1402.

4. Env-Wm 1402.33 requires stormwater which collects and is retained within a secondary containment area to be removed by a manually-activated pump or siphon, or a gravity drain pipe. Accumulated stormwater shall be drained as soon as practical and frequently enough to ensure that sufficient containment volume is always available to contain a release from the largest tank being contained.

IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES

1. Munce has violated Env-Wm 1402.33 by failing to remove accumulated stormwater to ensure that sufficient containment volume is always available to contain a release from the largest tank being contained.

2. For the violation identified in IV.1., above, Env-C 615.04(n) specifies a fine of \$500 per requirement. The fine is for the months of April, May, June, July, and August 2002.

The total fine being sought is \$2,500.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than October 28, 2002 using the enclosed colored form.

1. If Munce would like to have a hearing, please sign the appearance section of the colored form and return it to the DES Legal Unit, as noted on the form. A Notice of Scheduled Hearing will be issued.

2. If Munce chooses to waive the hearing and pay the proposed fine, please have the authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

3. If Munce wishes to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate Munce's interest in settling.

Munce is not required to be represented by an attorney. If Munce chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove,

by a preponderance of the evidence, that Munce committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Munce committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:


- * Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Munce proves, by a preponderance of the evidence**, applies in this case:
 - 1 The violation was a one-time or non-continuing violation, **and** Munce did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Munce did not benefit financially, whether directly or indirectly, from the violation.
 - 2 At the time the violation was committed, Munce was making a good faith effort to comply with the requirement that was violated.
 - 3. Munce has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
 - 4. Other information exists which is favorable to Munce's case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Munce committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Munce's opportunity to present testimony and evidence that Munce did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Munce has any evidence, such as photographs, business records or other documents, that Munce believes show that Munce did not commit the violation(s) or that otherwise support Munce's position, Munce should bring the evidence to the hearing. Munce may also bring witnesses (other people) to the hearing to testify on Munce's Superior Inc.'s behalf.

If Munce wishes to have an informal meeting to discuss the issues, Munce must contact the DES Legal Unit at (603) 271-6330 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If Munce has any questions about this matter, please contact the DES Legal Unit, at (603) 271-6330.


COPY
Philip J. O'Brien, Ph.D., Director
Waste Management Division

Enclosure (*NHDES Fact Sheet #CO-2002*)

H:\Admin Fines & License Actions\Admin Fines\Aboveground Storage Tank (AST)\Munce's Superior\AF 02-031.wpd

cc: George Dana Bisbee, Assistant Commissioner
Gretchen C. Rule, DES Legal Unit
Susan Alexant, DES Hearing and Rules Attorney
Lynn A. Woodard, P.E., DES